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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/630,562	07/30/2003	Scott Smith	760-12 DIV/CON	8643
23869	7590	08/17/2006	EXAMINER	
HOFFMANN & BARON, LLP 6900 JERICHO TURNPIKE SYOSSET, NY 11791			ISABELLA, DAVID J	
			ART UNIT	PAPER NUMBER
			3738	

DATE MAILED: 08/17/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/630,562	Applicant(s) SMITH, SCOTT	
	Examiner DAVID J. ISABELLA	Art Unit 3738	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 25 May 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-13 is/are pending in the application.
- 4a) Of the above claim(s) 2, 4, 5 and 9-11 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 3, 6-8, 12 and 13 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Status of the Claims

Claims 1-9 and 11-13 are currently pending. No amendment was made to the claims.

Applicant's election of speices illustrated in Figure 16 in the reply filed on 5/25/2006 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

Claims 2,4,5,9,10 and 11 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected speices, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on 5/25/2006. With respect to claim 10, the subject matter of claim 10 i.e. plurality of linked stent wires are not illustrated in Figure 16.

Status of 1.131 Declaration

The Declaration filed on November 1, 2004 has been considered and is persuasive in overcoming the date of the patent to Hieshima, et al (6063111).

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States

only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1,3,6-8,12,13 are rejected under 35 U.S.C. 102(e) as being anticipated by Banas et al (6264684).

A stent/graft composite device formed from a flat preformed planar strip (36) and stent assembly comprising: an elongate preformed non-textile planar strip of polymeric graft material having first and second opposed surfaces and a planar stent (38) attached onto one of said opposed flat surfaces of said strip to form said flat strip assembly, said strip assembly being helically wound into a continuous tubular structure is disclosed by Martin, et al.

Claim 3, see figures 1 and 4B for teaching of non-overlap.

Claims 6 and 7, see column 4, lines 40+.

Claim 8, see figures for tubular shape.

Claim 12-13, see appropriate embodiments shown in figures 5-12.

Response to Arguments

Applicant's arguments filed 11/1/2004 have been fully considered but they are not persuasive.

Independent claim 1 (presented below) does not preclude the device of Banas.

A stent/graft composite device formed from a flat preformed planar strip and stent assembly comprising: an elongate preformed non-textile planar strip of polymeric graft material having first and second opposed surfaces and a planar stent attached onto one of said opposed flat surfaces of said strip

to form said flat strip assembly, said strip assembly being helically wound into a continuous tubular structure.

In response to applicant's argument that the claims preclude the device of Banas is not well founded. Applicant argues that claim 1 requires that the planar strip does not have significant three-dimensional feature; and that the strip assembly is not an encapsulated assembly formed by co-extrusion or dipping techniques, as disclosed by Banas. It is noted that the features upon which applicant argues are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

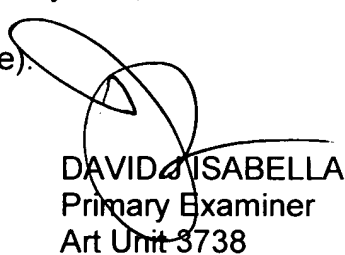
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to DAVID J. ISABELLA whose telephone number is 571-272-4749. The examiner can normally be reached on MONDAY-FRIDAY.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, CORRINE MCDERMOTT can be reached on 571-272-4754. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



DAVID J. ISABELLA
Primary Examiner
Art Unit 3738

DJI
8/11/2006